



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2017-0435]

RIN 1625-AA08

Special Local Regulation; Ohio River, New Martinsville, WV

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for all navigable waters, surface to bottom, of the Ohio River miles 127.5 to 128.5. This action is necessary to provide for the safety of life on these navigable waters near New Martinsville, WV during a high-speed boat race on June 17, 2017 and June 18, 2017. This regulation prohibits persons and vessels from being in the regulated area unless authorized by the Captain of the Port Ohio Valley or a designated representative.

DATES: This rule is effective from 8:45 a.m. to 6:15 p.m. on June 17, 2017 and June 18, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0435 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Robert Miller, Marine Safety Unit Huntington, U.S. Coast Guard; telephone 304-733-0198, email Robert.A.Miller2@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On May 11, 2017, the New Martinsville Vintage Regatta notified the Coast Guard that it will be sponsoring a high-speed boat race from 8:45 a.m. to 6:15 p.m. daily on June 17, 2017 and June 18, 2017 on the Ohio River miles 127.5 to 128.5 in the vicinity of New Martinsville, WV.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b) (B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish this safety zone by June 17, 2017 and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. This rule is necessary for the safety of life during the high-speed boat race on these navigable waters. It would be impracticable to delay this rule to provide a full 30 days notice because the event is scheduled, under contractual obligation and advertised to the local community to take

place on June 17, 2017 and June 18, 2017.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. The Captain of the Port Ohio Valley (COTP) has determined that potential hazards associated with the high-speed boat race to occur on June 17, 2017 and June 18, 2017, present a safety concern for anyone within the regulated area. The purpose of this rulemaking is to ensure the safety of people and property within the regulated area before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

This rule establishes a temporary special local regulation from 8:45 a.m. to 6:15 p.m. on June 17, 2017 and June 18, 2017. The temporary special local regulation will cover all navigable waters, surface to bottom, from mile 127.5 to 128.5 on the Ohio River in the vicinity of New Martinsville, WV. The duration of the regulated area is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled event. No vessel or person will be permitted to enter the temporary special local regulation without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 12866 (“Regulatory Planning and Review”) and 13563 (“Improving Regulation and Regulatory Review”) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net

benefits including potential economic, environmental, public health and safety effects, distributive impacts, and equity. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”), directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it.

As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB’s Memorandum titled “Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled ‘Reducing Regulation and Controlling Regulatory Costs’” (February 2, 2017).

This regulatory action determination is based on the size, location, duration, and time-of-day of the regulated area. Vessel traffic will be able to safely navigate through the affected area before and after the scheduled event. The Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the regulated area and the rule allows vessels to seek permission to enter the area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The

term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary special local regulation lasting from 8:45 a.m. to 6:15 p.m. daily on June 17, 2017 and June 18, 2017. It is categorically excluded from further review under paragraph 34(h) of Figure 2-1 of the Commandant Instruction. A Record of Environmental Consideration is available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and Recordkeeping Requirements,
Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

33 CFR PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add temporary § 100.35T08-0435 to read as follows:

§ 100.35T08-0435 Special Local Regulation; Ohio River, New Martinsville, WV.

(a) Location. All navigable waters of the Ohio River, surface to bottom, beginning at mile marker 127.5 and ending at mile marker 128.5 at New Martinsville, WV.

(b) Periods of enforcement. This rule will be enforced from 8:45 a.m. to 6:15 p.m. daily on June 17, 2017 and June 18, 2017.

(c) Regulations. (1) In accordance with the general regulations in § 100.801 of this part, entry into this area is prohibited unless authorized by the Captain of the Port Ohio Valley or a designated representative.

(2) Persons or vessels requiring entry into or passage through the area must request permission from the Captain of the Port Ohio Valley or a designated representative. U. S. Coast Guard Sector Ohio Valley may be contacted on VHF Channel 13 or 16, or at 1-800-253-7465.

(d) Informational Broadcasts. The COTP Ohio Valley or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the special local regulation, as well as any changes in the dates and times of enforcement.

Dated: June 12, 2017.

M. B. Zamperini,
Captain, U.S. Coast Guard,
Captain of the Port Ohio Valley.

[FR Doc. 2017-12499 Filed: 6/15/2017 8:45 am; Publication Date: 6/16/2017]